

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

Introduced

### Senate Bill 171

FISCAL  
NOTE

BY SENATORS BLAIR, CLINE, TARR, SMITH, AND SYPOLT

[Introduced January 9, 2020; referred  
to the Committee on Transportation and  
Infrastructure; and then to the Committee on Finance]

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1 A BILL to amend and reenact §11-3-9 of the Code of West Virginia, 1931, as amended, relating  
2 to exempting from personal property taxation private passenger automobiles that are 25  
3 years old or older.

*Be it enacted by the Legislature of West Virginia:*

### **ARTICLE 3. ASSESSMENTS GENERALLY.**

#### **§11-3-9. Property exempt from taxation.**

1 (a) All property, real and personal, described in this subsection, and to the extent limited  
2 by this section, is exempt from taxation:

3 (1) Property belonging to the United States, other than property permitted by the United  
4 States to be taxed under state law;

5 (2) Property belonging exclusively to the state;

6 (3) Property belonging exclusively to any county, district, city, village, or town in this state  
7 and used for public purposes;

8 (4) Property located in this state belonging to any city, town, village, county, or any other  
9 political subdivision of another state and used for public purposes;

10 (5) Property used exclusively for divine worship;

11 (6) Parsonages and the household goods and furniture pertaining thereto;

12 (7) Mortgages, bonds, and other evidence of indebtedness in the hands of bona fide  
13 owners and holders hereafter issued and sold by churches and religious societies for the  
14 purposes of securing money to be used in the erection of church buildings used exclusively for  
15 divine worship or for the purpose of paying indebtedness thereon;

16 (8) Cemeteries;

17 (9) Property belonging to, or held in trust for, colleges, seminaries, academies, and free  
18 schools, if used for educational, literary, or scientific purposes, including books, apparatus,  
19 annuities, and furniture;

20 (10) Property belonging to, or held in trust for, colleges or universities located in West

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21 Virginia, or any public or private nonprofit foundation or corporation which receives contributions  
22 exclusively for such college or university, if the property or dividends, interest, rents, or royalties  
23 derived therefrom are used or devoted to educational purposes of such college or university;

24 (11) Public and family libraries;

25 (12) Property used for charitable purposes and not held or leased out for profit;

26 (13) Property used for the public purposes of distributing electricity, water, or natural gas  
27 or providing sewer service by a duly chartered nonprofit corporation when such property is not  
28 held, leased out, or used for profit;

29 (14) Property used for area economic development purposes by nonprofit corporations  
30 when the property is not leased out for profit;

31 (15) All real estate not exceeding one acre in extent, and the buildings on the real estate,  
32 used exclusively by any college or university society as a literary hall, or as a dormitory or  
33 clubroom, if not used with a view to profit, including, but not limited to, property owned by a  
34 fraternity or sorority organization affiliated with a university or college or property owned by a  
35 nonprofit housing corporation or similar entity on behalf of a fraternity or sorority organization  
36 affiliated with a university or college, when the property is used as residential accommodations or  
37 as a dormitory for members of the organization;

38 (16) All property belonging to benevolent associations not conducted for private profit;

39 (17) Property belonging to any public institution for the education of the deaf, intellectually  
40 disabled, or blind or any hospital not held or leased out for profit;

41 (18) Houses of refuge and mental health facility or orphanage;

42 (19) Homes for children or for the aged, friendless, or infirm not conducted for private  
43 profit;

44 (20) Fire engines and implements for extinguishing fires, and property used exclusively  
45 for the safekeeping thereof, and for the meeting of fire companies;

46 (21) All property on hand to be used in the subsistence of livestock on hand at the

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47 commencement of the assessment year;

48 (22) Household goods to the value of \$200, whether or not held or used for profit;

49 (23) Bank deposits and money;

50 (24) Household goods, which for purposes of this section means only personal property  
51 and household goods commonly found within the house and items used to care for the house and  
52 its surrounding property, when not held or used for profit;

53 (25) Personal effects, which for purposes of this section means only articles and items of  
54 personal property commonly worn on or about the human body or carried by a person and  
55 normally thought to be associated with the person when not held or used for profit;

56 (26) Dead victuals laid away for family use;

57 (27) All property belonging to the state, any county, district, city, village, town, or other  
58 political subdivision or any state college or university which is subject to a lease purchase  
59 agreement and which provides that, during the term of the lease purchase agreement, title to the  
60 leased property rests in the lessee so long as lessee is not in default or shall not have terminated  
61 the lease as to the property;

62 (28) Personal property, including vehicles that qualify for a farm use exemption certificate  
63 pursuant to §17A-3-2 of this code and livestock, employed exclusively in agriculture, as defined  
64 in article X, section one of the West Virginia Constitution: *Provided*, That this exemption only  
65 applies in the case of ~~such~~ the personal property used on a farm or farming operation that annually  
66 produces for sale agricultural products, as defined in rules of the Tax Commissioner;

67 (29) Private passenger automobiles that are 25 years old or older;

68 ~~(29)~~ (30) Real property owned by a nonprofit organization whose primary purpose is youth  
69 development by means of adventure, educational, or recreational activities for young people,  
70 which real property contains a facility built with the expenditure of not less than \$100 million that  
71 is capable of supporting additional activities within the region or the state and which is leased or  
72 used to generate revenue for the nonprofit organization whether or not the property is used by

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73 the nonprofit organization for its nonprofit purpose, subject to the requirements, limitations and  
74 conditions set forth in §11-3-9(h) of this code; and

75 ~~(30)~~ (31) Any other property or security exempted by any other provision of law.

76 (b) Notwithstanding the provisions of §11-3-9(a) of this code, no property is exempt from  
77 taxation which has been purchased or procured for the purpose of evading taxation whether  
78 temporarily holding the ~~same~~ property over the first day of the assessment year or otherwise.

79 (c) Real property which is exempt from taxation by §11-3-9(a) of this code shall be entered  
80 upon the assessor's books, together with the true and actual value thereof, but no taxes may be  
81 levied upon the property or extended upon the assessor's books.

82 (d) Notwithstanding any other provisions of this section, this section does not exempt from  
83 taxation any property owned by, or held in trust for, educational, literary, scientific, religious, or  
84 other charitable corporations or organizations, including any public or private nonprofit foundation  
85 or corporation existing for the support of any college or university located in West Virginia, unless  
86 such property, or the dividends, interest, rents, or royalties derived therefrom, is used primarily  
87 and immediately for the purposes of the corporations or organizations.

88 (e) The Tax Commissioner shall, by issuance of rules, provide each assessor with  
89 guidelines to ensure uniform assessment practices statewide to ~~effect~~ implement the intent of this  
90 section.

91 (f) Inasmuch as there is litigation pending regarding application of this section to property  
92 held by fraternities and sororities, amendments to this section enacted in the year 1998 shall apply  
93 to all cases and controversies pending on the date of such enactment.

94 (g) The amendment to subdivision (27), subsection (a) of this section, passed during the  
95 2005 regular session of the Legislature, shall apply to all applicable lease purchase agreements  
96 in existence upon the effective date of the amendment.

97 (h) Nonprofit youth organization exemption — limitations, conditions, collection, and  
98 administration of one and one quarter percent fee, limitations, and distribution of monies.

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99           (1) The exemption from ad valorem taxation provided pursuant to the provisions of  
100 subdivision (29), subsection (a) of this section does not apply to a property owned by a nonprofit  
101 organization otherwise qualifying for the exemption but which property or facilities are used for-  
102 profit or outside the primary purpose of the owner which result in unrelated business taxable  
103 income as defined by Section 512 of the Internal Revenue Code of 1986, as amended, unless  
104 the income is generated by an activity upon which the one and one quarter percent fee authorized  
105 by subdivision (2) of this section is applied as provided in subdivision (3) of this subsection.

106           (2) The owner of real property exempt from ad valorem taxation under subdivision (29),  
107 subsection (a) of this section shall pay an amount equal to one and one quarter percent of the  
108 gross revenues the owner receives in accordance with this subsection. For purposes of this  
109 subsection, "gross revenues" means the gross amount received by the owner as payment for use  
110 of the property or the facilities thereon.

111           (3) Gross revenues derived from the following facilities, uses, activities, and operations  
112 are subject to a fee of one and one quarter percent of such gross revenues:

113           (A) Gross revenues derived from the use of lodging and campground facilities by persons  
114 participating in meetings and multiday spectator sports or multiday recreational, celebratory, or  
115 ceremonial events held on-site where on-site lodging or camping is offered as part of the program.  
116 For purposes of this section the term "meeting" means, and is limited to, a gathering, assembly,  
117 or conference of two or more persons who have deliberately convened at a single specific location  
118 at a single specified time and date for a common specific purpose.

119           (B) Gross revenues derived from any retail store located at the facility that is open only to  
120 those persons who are attending meetings, spectator sports, recreational, celebratory, or  
121 ceremonial events held on-site at the facility.

122           (C) Gross revenues derived from operations of gift shops at a welcome or information  
123 center located adjacent to a public highway operated by the nonprofit organization which is open  
124 to the general public.

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125 (D) Gross revenues derived from the leasing of zip-lines, canopy tours, wheeled sports,  
126 and climbing facilities used by the general public on a for-profit basis: (i) Under a written  
127 agreement with a licensed commercial outfitter operating a business utilizing zip-lines, canopy  
128 tours, wheeled sports, or climbing areas of a similar nature in the same or an adjacent county  
129 where the facilities are located; and (ii) when the property or facilities are used as part of a training  
130 or advanced experience offered by the licensed commercial outfitter.

131 (E) Gross revenues derived from the use or operation of zip-lines, canopy tours, wheeled  
132 sports facilities or activities, climbing facilities or activities and the use or operation of other  
133 sporting facilities on the exempt property that are leased on a for-profit basis for spectator events,  
134 such as concerts, spectator sporting events or exhibitions or similar mass gathering events.

135 (F) Gross revenues derived from leases or agreements for use of the property for meetings  
136 and multiday spectator sports or events or multiday recreational, celebratory, or ceremonial  
137 events held on site.

138 (4) Notwithstanding any other provision of this section to the contrary, programs or  
139 activities occurring on the property or its facilities held in conjunction with a government  
140 organization or sponsored by other nonprofit organizations serving youth, veterans, military  
141 services, public service agencies including, fire, police, emergency and search and rescue  
142 services, government agencies, schools and universities, health care providers and similar  
143 organizations or groups which are designed to provide opportunities for learning or training in the  
144 areas of leadership, character education, science, technology, engineering, arts and mathematics  
145 (STEAM) programs, physical challenges, sustainability, conservation and outdoor learning shall  
146 be considered a charitable or nonprofit use for the purposes of this section and not subject to the  
147 1.25 percent fee.

148 (5) Notwithstanding any other provision of this section to the contrary, activities open to  
149 the public through individual visitor passes allowing tours and access to the property and its  
150 facilities for the purpose of viewing or participating in demonstrations, programs and facilities

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151 providing information and experiences consistent with the owner's nonprofit purposes where zip-  
152 lines, canopy tours, wheeled sports, or climbing facilities are merely components of the  
153 demonstrations, programs and facilities used shall be considered a charitable or nonprofit use for  
154 the purposes of this section and not subject to the 1.25 percent fee: *Provided*, That such individual  
155 visitor passes may not include the rental or use of on-site overnight lodging or camping facilities.

156 (6) *Administration.* —

157 (A) The sheriff of the county wherein the majority of the acreage of the property is located  
158 as specified in the deed to such property, shall collect, on a monthly basis, all moneys derived  
159 from the fee of 1.25 percent of the gross revenues imposed under this subsection.

160 (B) The sheriff of the county wherein the majority of the acreage of the property is located  
161 as specified in the deed to such property, shall prescribe such forms and schedules as may be  
162 necessary for the efficient, accurate, and expeditious payment and reporting of the 1.25 percent  
163 fee specified in this subsection on gross revenues.

164 (C) The sheriff of the county wherein the majority of the acreage of the property is located  
165 as specified in the deed to such property shall administer the fee imposed under this subsection,  
166 including refunds and adjustments.

167 (D) Payment, administration, and compliance of fee payers and administrators shall be  
168 subject to audit by the Office of Chief Inspector.

169 (E) All moneys so collected, net of refunds and adjustments, shall be paid into a special  
170 account in the State Treasury, which is hereby created, and the amount thereof shall be  
171 distributed and paid annually, by the State Treasurer, on October 1 of each year, into the funds  
172 and to the distributees specified in subdivision (7) of this subsection in the amounts specified  
173 therein.

174 (7) *Distribution.* —

175 (A) Twenty-five percent of moneys so collected, net of refunds and adjustments, shall be  
176 paid annually to the Tourism Promotion Fund established pursuant to §5B-2-12 of this code.

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177           (B) Twenty-five percent of moneys so collected, net of refunds and adjustments, shall be  
178 paid annually to the sheriff of the county where the property is located which, but for the exemption  
179 provided in subdivision (29), subsection (a) of this section, would be entitled to receive ad valorem  
180 taxes on the property. The sheriff shall treat all such payments in the same manner as payments  
181 in lieu of taxes, and such payments are subject to the adjustment mandated under §18-9A-12 of  
182 this code. For properties located in more than one county, the amount paid to the sheriff of the  
183 county shall be in proportion to the total number of acres located in each county at the close of  
184 the fiscal year, as specified in the deed to such property.

185           (C) Fifty percent of moneys so collected, net of refunds and adjustments, shall be divided  
186 equally and paid annually into separate accounts established and maintained by the sheriffs of  
187 the county or counties wherein the property is located and the sheriffs of any other county that is  
188 within the jurisdiction of the same economic development authority as the county or counties  
189 wherein the property is located to be used solely for the establishment and delivery of a science,  
190 technology, engineering, art and math (STEAM) program in conjunction with the owner of the  
191 exempt property. The funds shall be divided equally for use in each county and the programs  
192 must be approved by the respective county superintendents of schools. Expenditures from the  
193 accounts shall be authorized by the county superintendent of schools.

194           (8) If lodging is furnished as part of a retreat, meeting, or multiday spectator sport or event  
195 being held on-site wherein on-site lodging or camping is offered as part of the program, any  
196 applicable hotel occupancy tax and state and local consumers sales and service tax and use tax  
197 shall be paid based upon the actual location of such lodging.

198           (9) If merchants are allowed to do business on the property, the owner or lessee of the  
199 property shall offer space to local merchants on terms at least as favorable as are offered to other  
200 merchants.

201           (10) For the purposes of this subsection, owner includes the owner holding record title to  
202 the property and its affiliates to the extent they are commonly owned, controlled or have the power

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203 to appoint the governing body of the affiliate.

204 (11) The Tourism Commission shall include in its annual report submitted to the Governor  
205 and the Legislature a summary of funds paid into the Tourism Promotion Fund and  
206 recommendations pertaining to the administration of this section.

207 (12) This subsection may not be construed to prohibit the owner of property otherwise  
208 subject to this section from having portions of the property severed from the remainder of the  
209 property, assessed and taxed as if nonexempt and thereafter conducting business on such  
210 property the same as any other nonexempt property: *Provided*, That the area of property to be  
211 severed shall be approved by the county commission wherein the property lies so as to include  
212 in the severance all property substantially supporting the for profit or business activity giving rise  
213 to the specific purpose of the severance and excluding all property entitled to the continued  
214 benefits of this act.

215 (i) To assure the implementation of subsection (h) of this section does not harm local and  
216 regionally located businesses by use of the tax exempt facility in a manner that cause unfair  
217 competition and unreasonable loss of revenue to those businesses, studies shall be periodically  
218 conducted to assure that further legislation is in order regarding the uses of the tax exempt facility.  
219 The county commission of any county where such a property is located shall report to the Joint  
220 Committee on Government and Finance by January 1 every five years after the effective date of  
221 this section. The report shall include information on any unfair business competition resulting from  
222 the establishment of the nonprofit status, and include a report of the costs and benefits to its  
223 county of the tax exemption and associated fee, including an audit of that county's use of the net  
224 revenues. The West Virginia University Bureau of Business and Economic Research in  
225 coordination of the Center for Business and Economic Research at Marshall University, by  
226 January 1, 2020, shall undertake a study and report to the committee, the economic impact of  
227 this tax exemption and fee to the county and that region of the state, and make any  
228 recommendations regarding the benefits and disadvantages for continuing the provision of this

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229 tax exemption and fee, included, but not limited to, the impacts to other small and large  
230 businesses in the county, the costs to the county has incurred as a result of use of the facility,  
231 and any other relevant data that the universities may ~~deem~~ determine relevant.

NOTE: The purpose of this bill is to exempt from personal property taxation private passenger automobiles that are 25 years old or older.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.